IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

CRP.No. 634 of 2005(E)

OS.1031/2003 of I ADDL.M.C.,ERNAKULAM

REVN. PETITIONER: PLAINTIFF:

ANNAMMA MATHEW, AGED 52,
W/O. MATHEW ABRAHAM, C.C. DOOR NO.50/2304 F,
ELANJIKKAL HOUSE, R.S. ROAD, EDAPPALLY,
COCHIN-24.

BY ADV. SRI.BABU CHERUKARA

RESPONDENTS:

1. DEPUTY TAHSILDAR (R.R.)
KANAYANNUR TALUK, ERNAKULAM, COCHIN-11.

2. STATE OF KERALA REPRESENTED BY THE
DISTRICT COLLECTOR, ERNAKULAM.

3. ASSISTANT SALES TAX OFFICER,
1ST CIRCLE, KALAMASSERRY, OFFICE AT
EDAPPALLY, COCHIN-24.

4. M/S. MARBLES INDIA, R.S. ROAD,
EDAPPALLY, COCHIN-24.

BY ADV. SRI.SAJI.K.JOHN
GOVERNMENT PLEADER BINDU FOR R1 TO R3

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISNAN, J.

C.R.P.No. 634/2005

Dated this 2nd day of August, 2007

O R D E R

This revision petition is preferred against the order of the Additional Munsiff Court, Eranakulam, in O.S.1031/2003. The Court below directed that court fee has to be paid under Section 27(c) of the Act, ie, one half of the amount shown to be recovered. The Court below relied on a decision of this Court reported in **Kunharamu v. Kunhalankutty (2003 (1) KLT 216)**. It was a case where there was an amount due from the first defendant in the suit towards arrears of tax. Father and other brothers of the first defendant instituted suit contending that the first defendant if at all has got a fractional share and the property belongs to the plaintiff and it cannot be proceeded against with and therefore, sought a relief of injunction against the Government. This Court on a consideration of the materials and held that the court fee has to be paid on one half of the market value of the property.

2. The learned counsel for the revision petitioner had drawn my attention to another single judge's decision of

this Court reported in **Itty v. State of Kerala (1997 (2) KLT 597).** It was a case filed by the plaintiff for a declaration that the property belong to the plaintiff and not to the defendant and for a relief of injunction to restrain the authorities from collecting the amount by sale of the property. This Court in the said decision held that the declaratory relief sought for in the suit was to declare the property belong to the plaintiff and not to the fifth defendant and the other relief was a relief for permanent injunction in which, Court fee was paid under Section 27 (c) of the Act. So prayer of injunction in the decision cited above was the prayer which has to follow on a declaration of title of the plaintiff over the property. When it was the situation the Court said that the provision under the proviso to Section 27(c) need not be adhered to, because the main prayer is a declaratory relief with respect to the title of the plaintiff. This decision was considered by learned Single Judge in the decision reported in (2003 (1) KLT 236). According to the facts

of the case involved therein, this decision was held not to apply to the facts of the said case.

3. In the case before me also the suit is filed by the wife to hold that she is entitled to injunction, as the property belongs to her. It is a case wherein authorities had proceeded to realise the debt due from her husband as a partner of company. So it is for a definite sum of amount, revenue recovery proceedings are initiated and there is no relief of declaration sought for. So by applying the principles laid down in (2003 (1) KLT 236) it is at a later point of time, I am also inclined to hold that in a case of this nature when what is sought to be injuncted is recovery of specified amount by sale of the property and when it is an ascertained sum, Court fee has to be paid in accordance with the proviso to Section 27 (c) of the Court Fees Act. I am not in a position to agree with the arguments advanced by the learned counsel for the revision petitioner. Therefore, I confirm the order of the learned Munsiff and dismiss this revision petition.

4. Learned counsel for the revision petitioner seeks reasonable time for payment of the amount of court fee. One month's time from today is granted for making such payment.

M.N.KRISHNAN,
JUDGE

mrcs